

Bulletin 64-3

HEALTH OF INSURED - INCONTESTABLE CLAUSE

June 23, 1964

The Department has considered several forms of life policies which contain the following provision:

1. **Policy in Effect:** No obligation is assumed by the Company prior to the date of delivery of this Policy, nor unless on the said date the first payment has been duly made, and the Insured is alive and in sound health. Should the proposed insured not be alive and in sound health on the date hereof, any amount paid to the Company as premiums hereon shall be returned.
4. **Incontestability and Contract:** This policy shall be incontestable for the amount due after it has been in force during the lifetime of the Insured for one year from the date hereof, except for nonpayment of premiums and misstatement of age. The policy constitutes the entire contract between the parties hereto.

In order to clarify the fact that the company's rights regarding the health of the insured are subject to the provisions of paragraph No. 4 regarding incontestability, a statement substantially as follows should be added to paragraph No. 1 in all forms of life policies hereafter filed with similar terminology regarding the health of the insured:

"This paragraph shall be subject to paragraph No. 4 'Incontestability and Contract.' "

The phrase "during the lifetime of the insured" should be eliminated from paragraph No. 4 in all forms of life policies hereafter filed, since this phrase conflicts with the provisions of 38-9-250 of the Code, which applies to each life policy.

In connection with the foregoing, reference is made to the South Carolina case of *Blackwell vs. United Insurance Company of America*, 92 SE2d 702 (1957).

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